BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 3239 Of 2003.

PETITIONER :- Ashok Kumar Gupta, son of Som Nath Gupta, aged ab out 54 yrs., resident of M/s Neelam Medical Agency, Indra Chowk, Ramnagar, Bhilai, District Durg (C.G.)

V E R S U S

RESPONDENTS :-1. Niranjanlal Khandelwal, Through Prabhulal Khandelwal, Near Adalat Saw Mill, Nehru Nagar, Supela, Bhilai, Tahsil and Distt. Durg (Chhattisgarh),

2. Second Additional District Judge, Durg, District Durg (C.G.),

3. Fourth Civil Judge Class-II, Durg, District Durg (C.G.).

P.R. No. 3088/03
Presented by Shri Pankaj Agrawal
dated 01/10/03

PETITION UNDER ARTICLE 227 OF CONSTITUTION OF INDIA

DETAILS OF PETITION :-

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

W.P.No.3239/

मामला क्रमांक ..... सन् 2003

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
21.11.03	Shri H.B. Agrawal, counsel for the petitioner. By this petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 20th June, 2003, passed by the Second Additional District Judge, Durg, in Misc. Civil Appeal No.6 of 2001, by which the learned Additional District Judge dismissed the appeal of the petitioner herein on the ground that the appellant is not taking any step to get the service effected on the respondent. Therefore, in the circumstances, the appeal is dismissed under Order 41 Rule 18 of the Code of Civil Procedure. I have heard the learned counsel for the petitioner. The learned counsel for the petitioner submits that the appeal of the petitioner has been dismissed wrongly. In the amended Civil Procedure Code, Rule 18 of Order 41 has already been deleted. Therefore, the learned Additional District Judge is not within his right to dismiss the appeal on the ground mentioned in the order itself. The learned counsel further submitted that since respondent No.1 herein was not appearing before the appellate Court and no notice was served on him, therefore, there is no need to issue notice in this writ petition and it can be disposed of without giving the notice.	

XI-HC-22

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -: 2 :-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
Soma	It is true that Rule 18 of Order 41 of the C.P.C. has been deleted vide Amending Act, 49 of 1999 w.e.f. 01.07.2002. Therefore, the order of the learned appellate Court is without jurisdiction and the same is liable to be set aside and it is accordingly, set aisde. The appeal is directed to be restored to its original number and be proceeded from the stage at which it was dismissed. With the above observations and directions the petition stands disposed of. Certified copy as per rules. Sd/- L.C.BHADOO Judge	